[APPELLATE CRIMINAL JURISDICTION]
CUSSEN, J.
September 27, 1935.

BACHI BIN ABDULLAH.....Appellant

v.

PUBLIC PROSECUTOR.....Respondent

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 31 of 1935]

Security for good behaviour—The Criminal Procedure Code, 1918, section 69—Previous convictions.

A record of past convictions, by itself alone, is not sufficient to justify an order to give security under section 69 of the Criminal Procedure Code, 1926.

The Magistrate must be satisfied that the accused is an habitual offender at the time of making the order, and some evidence, which will vary according to the circumstances of each particular case, must be given to cover the period from the last conviction.

Appellant in person.

H. C. Willan, Deputy Legal Adviser for the respondent.

CUSSEN, J.—The appellant has a record of convictions extending over a long period—and including several convictions for theft.

He was last convicted in Kuala Lumpur on the 2nd March, 1934, of theft and sentenced to 6 months R.I., and so was discharged from prison on the 2nd September, 1934.

On the 27th August, 1935 he was charged and tried before the Magistrate, Kuala Lumpur, on several charges of dishonestly retaining property and was acquitted.

He was arrested again by the Police on the following day (28th August) and produced before the same Magistrate under section 69 (a) of the Criminal Procedure Code 1926 as being "an habitual thief."

The only evidence produced by the prosecution was the record of past convictions, and, on this alone, as he states, the Magistrate made an order to give security for good behaviour under section 69(a) of the Criminal Procedure Code.

In my opinion a record of past convictions, by itself alone, is never sufficient to justify an order to give security.

The Magistrate must be satisfied that the person is an habitual thief at the time of making the order, and some evidence must be given to cover the period from the last conviction up to the present time: in the present case a period of nearly one year. The amount and nature of such add tional evidence will vary according to the circumstances of each individual case, but something there always must be.

"The mere fact of a previous conviction or of previous convictions of offences involving dishonesty is not sufficient to justify the putting in force the powers of section 506 (=section 69 of our Enactment) unless there is some additional evidence to show that the person complained against has done some act or resumed avocations that indicate upon his part an intention to return to his former course of life and to pursue a career of preying on the community. The greatest thief is entitled to a *locus penitentiae* when he has served out his punishment"—*per* Straight, J. in *Empress of India* v. *Nawab*, I.L.R. (1880) 2 All. 835, 838.

"The mere record of certain previous convictions on account of which the person has undergone punishment does not satisfy the requirements of these provisions"—*In re Raja Valad Hussein Sahib*, I.L.R. (1885) 10 Bom. 174.

If a record of past convictions were sufficient it would be open to the Police to arrest a man immediately after his discharge from prison and ask for an order to give security which, besides being a grave injustice, is a *reductio ad absurdum.*

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]
HOWES, J.
September 30, 1935.

M. S. MAHENDRAM.....Appellant

v.

CHAIRMAN SANITARY BOARD, LOWER PERAK .....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 39 of 1934]

The Sanitary Boards Enactment, 1929, sections 39 aud 53 — Giving notice where holding is assessed for the first time—Objection to attachment made to recover an arrear.

Where a holding is assessed for the first time the giving of a notice to the owner or occupier thereof under section 39 (iii) Sanitary Boards Enactment, 1929, is mandatory and if such notice is not given the inclusion of such holding in the assessment list is bad.

There is nothing in section 53 (i) to require an objector to state his grounds of objection. All he need do, if he disputes the propriety of the attachment, is to apply to the Court for an order to stay the proceedings.

Appellant in person.

I. W. Blelloch, Deputy Public Prosecutor, for the respondent.

Cur. Ad. Vult.

HOWES, J.—This is an appeal from the order of the Magistrate, Telok Anson, made under Section 53 (i) of the Sanitary Boards Enactment, 1929, refusing to stay attachment proceedings in connection with arrears of water rate, conservancy fees &c, in respect of which the appellant's goods had been attached.

The appellant for a number of years ran a school,—the Nagaratnam Memorial School,—and on 20th July, 1927, the then British Resident exempted the school buildings from assessment of rates, by a minute, (of which a copy is produced) "Exemption from assessment approved."

This, apparently, was done by the Resident under section 14 of the then Sanitary Boards Enactment, 1916, which authorised him to exempt schools (*inter alia*) "from payment of any rate",

i.e., any of those mentioned in that Enactment, namely rates for, (*a*) general purposes; (*b*) public lighting; and (*c*) the extinction and prevention of fire.

In July, 1927, the Water Supply Enactment, 1926, was in force, and section 4 thereof authorised the levy of a water rate, within a Sanitary Board area, which was to be collected by the Sanitary Board and paid to the State Treasurer as general revenue.

Under section 7 of that Enactment, power was given to the Sanitary Board to exempt from water rate lands, houses &c, not sufficiently supplied with water, but no power of exemption was given to the Resident.

From this, it is clear that the "Exemption from assessment" given by the British Resident to the Nagaratnam Memorial School on 20th July, 1927, could not have included exemption from water rate.

Notwithstanding this, from 1927 onwards, no rates of any kind were collected from the school; and it was not till 1931 that the oversight was discovered.

The fact that the exemption given by the Resident in July, 1927, was misinterpreted, cannot affect the appellant's liability to pay water rate, and the contention that this exemption included water rate, raised in his first supplementary ground of appeal, must necessarily fail.

In his argument, the appellant confined his appeal to the above point, and to grounds 4 and 5 of the Memorandum of Appeal.

In his affidavit, sworn on 31st August, 1934, in objection to the attachment of his goods in satisfaction of the arrears, the appellant based his objection solely on the fact that, in his view, the school had been exempted from all assessment.

At the inquiry before the Magistrate, he introduced a fresh objection, *viz*, that it was a condition precedent to the levying of any rate, that Section 39(iii) of the Sanitary Boards Enactment, 1929, should be complied with. That subsection says that "in all cases in which any holding is for the first time assessed or the assessment thereon is increased, the Chairman shall also give notice to the owner or occupier thereof."

The appellant contends that until it was proved before the Magistrate that this notice was given, it must be assumed that the assessment on his holding was invalid and therefore the levying of the water rate was illegal. He does not dispute his liability to pay $67.50, arrears of conservancy fees.

The Deputy Public Prosecutor, for the respondent, has argued that since this point was not raised in the appellant's first affidavit objecting to the attachment, the appellant was debarred from raising it in the course of the inquiry before the Magistrate. I do not agree. There is nothing in Section 53(i) to require the objector to state his grounds of objection. All he need do, if he disputes the propriety of the attachment, is to apply to the Court for an order to stay the proceedings.

The Court then makes "Such inquiry as may be necessary"—an elastic term,—which does not suggest a strict procedure, such as would be followed in (say) an appeal. At such inquiry, I think, the objector is entitled to raise any point, which is material in support of his objection.

The appellant has referred to Enactment 31 of 1934, an Enactment passed to validate certain assessments made under the Sanitary Boards Enactment, 1929, in respect of the Malay Agricultural Settlement, Kuala Lumpur, in support of his contention that notice of the assessment was essential.

By section 2 of Enactment 31 of 1934 it was provided that notwithstanding the non-compliance with the provisions of section 39(iii) of the Sanitary Boards Enactment, 1929, in so far as they require the Chairman to give notice to the owner or occupier of buildings assessed for the first time, it shall be deemed that the assessment list was validly made, and was and is effective as if the notice had in fact been given.

Under section 4(iii) of the present Water Supply Enactment, 1932, (which was in force when the first notice of demand of 7th November, 1932, was sent to the appellant) "the value of the holdings for the purpose of assessment of the water rate shall be the value as shown in the assessment list prepared in accordance with the Sanitary Boards Enactment, 1929."

The assessment list is therefore the basis on which the water rate is levied.

It now becomes a question whether the failure of the Chairman to give the appellant notice under section 39(iii) that his holding had been assessed for the first time, (if in fact no such notice was given) renders the assessment on the appellant's holding, invalid.

As soon as the objector raised the question whether section 39(iii) of the Enactment had been complied with, it was clearly the duty of the Magistrate to call for evidence on this point. In coming before the Magistrate at the inquiry, the Chairman should have been prepared to prove:—(*a*) the assessment list for 1932; and (*b*) the fact that notice had been served on the appellant, under section 39(iii). Since the giving of that notice is mandatory, it was the Chairman's duty to satisfy the Magistrate that it had been given; as if it was not given the inclusion of the appellant's holding in the assessment list was bad.

Had the Chairman produced the book purporting to contain the assessment, under section 55 of the Enactment, this would have been *prima*

facie evidence of the validity of the assessment, and the onus would then have been on the objector, to show that he had not received the personal notice required by section 39(iii). This book, however, was not produced.

In the notes taken by the Magistrate at the inquiry, it is stated, the Chairman submitted that "this is a question of water rate and not assessment." This, of course, was incorrect; as the basis, for collecting the water rate, is the assessment for other rates. Nor, in the grounds of judgment, does the magistrate appear to have appreciated the fact that if the assessment was bad (owing to the failure of the Chairman to give notice under section 39(iii)) the demand for water rate was illegal.

The mere fact that notices of demand were sent to the appellant is not sufficient notice to satisfy section 39(iii), as on the receipt of the first of such demands, it would be too late for the appellant to lodge an objection to the assessment under section 40. The object of the notice under section 39(iii) is to give the owner or occupier an opportunity of objecting to the assessment, and until it is shown that such notice was sent, (which it was the duty of the respondent to prove), the assessment for 1932 must be assumed to have been invalid.

The only remaining question is whether the appellant, by his letter to the Chairman dated the 19th June, 1934, (in which he did not dispute the liability of the school to pay the amount demanded, but said no funds were available, and asked to be allowed to pay by instalments of $20 a month and that attachment should not be made) was estopped from objecting to the attachment?

The inquiry was held on the 25th September, 1934, and this letter was considered by the Magistrate in his grounds of judgment. It was evidently written before the appellant had appreciated the point of the absence of notice under section 39(iii), which he first raised at the inquiry, and on which he relied in the present appeal.

That letter was merely a request and offer, which was not acted on by the respondent, who, in fact, proceeded with the attachment. For this reason, in my opinion, it was open to the objector at the inquiry to re-open the whole issue, and in particular to raise this vital point, *viz*, the validity of the assessment.

In the absence of proof that the notice under section 39(iii) had been sent, which was an essential preliminary to the validity of the attachment, I consider the appellant is entitled to succeed, and the appeal is allowed, except as to the sum of $67.50 for conservancy fees which sum the appellant admits was due and owing. The amount remaining in Court, less the $67.50, to be repaid to the appellant.

Appeal allowed.